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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1946**

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# No. 154

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ATLANTIC MEAT COMPANY, INC.,
*Petitioner,*

*vs.*

THE RECONSTRUCTION FINANCE CORPORATION
(FORMERLY DEFENSE SUPPLIES CORPORATION)

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.**

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# No. 154

ATLANTIC MEAT COMPANY, INC.,
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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

*To the Honorable Supreme Court of the United States:*

The petitioner, the Atlantic Meat Company, Inc., a Massachusetts corporation, respectfully prays that a writ of certiorari issue to review the judgment entered in this case on May 8, 1946 by the United States Emergency Court of Appeals.

### Opinion Below

The opinion of the United States Emergency Court of Appeals has not as yet been reported in the Federal Reporter and the page references thereto are to the printed opinion as issued by that Court and contained in the record at pages 33 to 36.

## Statement of the Matter Involved

This action arises upon a complaint filed July 14, 1945 in the United States Emergency Court of Appeals against the denial by Defense Supplies Corporation, now Reconstruction Finance Corporation, of plaintiff's protest against the validity of Amendment No. 2 (9 F. R. 1820) issued by Defense Supplies Corporation on October 30, 1943, pursuant to the Directive of the Director of the Office of Economic Stabilization, issued October 25, 1943 (8 F. R. 14641), to its Regulation No. 3, Livestock Slaughter Payments and Livestock Slaughter Payments Regulation No. 3 Revised (10 F. R. 1336) of Defense Supplies Corporation, issued and effective January 19, 1945, under which defendant has ruled that the plaintiff was ineligible to receive the special subsidy of 80¢ per cwt. payable to non-processing slaughterers of cattle.

The complaint raised several objections to the validity of the Amendment and Regulation (R. 15, 16, 17) which in substance are that they (1) Were not in accordance with the Directive of the Director of the Office of Economic Stabilization issued October 25, 1943; (2) Violated Section 2(m) of the Emergency Price Control Act of 1942 as amended by the Stabilization Act of 1942, as amended, by imposing conditions or penalties not authorized by the provisions of that Act or of any Acts, or of any lawful regulation issued thereunder; (3) Were repugnant and contrary to the purposes of said Directive as therein stated, as set forth in the "Explanation of O. E. S. Directive" and as set forth in the press release, O. W. I. Release 2652 which accompanied its issuance; (4) Constituted the administration of a subsidy provision by discretion rather than by law; (5) Were arbitrary, capricious and inquitable in that they defeated the purposes of said Directive and of the Stabilization Act and, when considered in

conjunction with the Price Administrator's Regulation, in aid of which their adoption was procured, did not allow plaintiff and those similarly situated to recover out-of-pocket costs upon the production of beef; and (6) Violated Article V of the Amendments to the Constitution, since they operated, in conjunction with the Price Administrator's Regulation, to deprive plaintiff of its property without due process of law and, in conjunction with the War Food Administrator's set-aside Orders, amounted to a taking of private property for public use without just compensation.

The defendant moved to dismiss the complaint for lack of jurisdiction which was denied by the Emergency Court on the authority of *Illinois Packing Co.* v. *Snyder,* 151 F. (2d) 337, and the defendant was ordered (R. 31) to answer and file a transcript of the material portions of the proceedings, which it did (R. 18-19 and 1-13) on October 13, 1945.

The answer in substance consisted of a general denial together with affirmative allegations that (1) Section 2 of Public Law 68 (undoubtedly meaning Public Law 88) (S. 502), 79th Congress, specifically ratifies and affirms the regulation complained of giving it the force and effect of law; (2) The legality and validity of the regulation complained of has been conclusively established by approval of the Director of Economic Stabilization evidenced by twelve directives issued subsequent to the Directive of October 25, 1943; (3) The provisions of the regulation complained of were authorized by Section 2(e) of the Emergency Price Control Act; (4) The provisions of the regulation complained of are consistent with the October 25 Directive of the Office of Economic Stabilization; (5) The provisions of the regulation complained of are not arbitrary, capricious, *ultra vires* or otherwise unlawful but are reasonable, necessary and duly authorized; (6) Plaintiff has not shown

that for six consecutive months in 1942 it sold 98% or more, dressed carcass weight, of its total beef in the form of carcasses, wholesale cuts, boneless beef or ground beef; (7) Defendant believes that from November 1, 1943 to March 31, 1944 plaintiff was owned by General Foods Corporation which during that period owned Batchelder & Snyder Company, Inc., a processor or purveyor of meat, and that thereafter plaintiff was owned by Batchelder & Snyder Company, Inc.

The case was argued in Boston on December 21, 1945, before a division of the Court consisting of Chief Judge Maris, Judge Magruder and Judge McAllister and on May 8, 1946, a judgment was entered dismissing the complaint together with an accompanying opinion expressly based upon the case of *Earl C. Gibbs, Inc.* v. *Defense Supplies Corp. et al.* (R. 34-35), not yet reported in the Federal Reporter, but being No. 226 on the docket of the Emergency Court of Appeals and decided, with McAllister J. dissenting, on the same day. On May 17, 1946 a petition, assented to by counsel for the defendant, was filed for clarification and enlargement of the opinion (R. 37), to avoid the prejudicial effect of an incomplete presentation of the profit position of the plaintiff considered in conjunction with its affiliate and to disclose that it derived no "profit, either direct or indirect, from processing operations in the broad sense," see *Atlantic Meat Company, Inc.*, v. *Reconstruction Finance Corporation* (E. C. A. decided May 8, 1946) (R. 35) by including the unquestioned facts that regardless of its affiliation with Batchelder & Snyder, "a processor of meat within the meaning of Amendment No. 2," the combined operations of the two on beef from July, 1943, through February 15, 1945, showed a loss of $553,845.66, while the combined operations of the two including all departments of, and commodities sold by, its affiliate showed a loss dur-

ing such period of $161,078.14 (R. 9). This petition was denied by order entered May 28, 1946 (R. 38).

## Jurisdiction

Jurisdiction to review this cause exists under Section 204 (d) of the Emergency Price Control Act of 1942 (50 U. S. C. A. App., Section 924 (d)).

The date of entry of judgment in the cause sought to be reviewed was May 8, 1946 (R. 36). The judgment was rendered by the United States Emergency Court of Appeals.

## Questions Presented

The following questions are presented:

1. Did the Emergency Court of Appeals have jurisdiction to determine the validity of Amendment No. 2 to Defense Supplies Corporation's (now Reconstruction Finance Corporation's) Regulation No. 3?

2. Under what authority are the beef subsidy payments made?

3. Can the Emergency Court of Appeals assume jurisdiction to pass upon questions over which Congress, by Section 2 (m) of the Emergency Price Control Act, as amended by the Stabilization Extension Act of 1944 (50 U. S. C. A. App. Section 902 (m)), has specially given jurisdiction to the United States District Courts?

4. Did Defense Supplies Corporation have the power to modify, or deviate from, the directives on policy issued by the Director of the Office of Economic Stabilization under authority of Executive Orders No. 9250 and No. 9328?

5. Did the Amendment and Regulation which incorporated it comply with the Directive on policy so issued on October 25, 1943, by the Director of the Office of Economic Stabilization?

6. If the Amendment were valid when issued, does its interpretation and application by the defendant in conjunction with Revised Maximum Price Regulation No. 169 and the War Food Administrator's set-aside Orders, violate Article V of the Amendments to the Constitution?

**Reasons Relied upon for Allowance of Writ**

1. The United States Emergency Court of Appeals has by its decision in this cause assumed and enunciated a novel and important question of law pertaining to its jurisdiction. It has assumed jurisdiction to pass upon the validity of a regulation issued by Defense Supplies Corporation although Congress, which created that Court and delineated its jurisdiction in the Emergency Price Control Act, did not include jurisdiction over regulations issued by Defense Supplies Corporation or any agency other than the Office of Price Administration.

Although this question was not raised in the final argument in this cause before that Court, it is a fundamental precept of law that a court cannot acquire jurisdiction of a subject matter over which it lacks jurisdiction under the authority creating it by any consent or waiver of the parties. See *United States* v. *Griffin*, 303 U. S. 226, *Thomas* v. *Ohio State University*, 195 U. S. 207, *Minnesota* v. *Northern Securities Co.*, 194 U. S. 48, 62. The question of jurisdiction had previously been raised by the defendant, but its motion to dismiss had been denied (R. 31) upon the authority of *Illinois Packing Co.* v. *Snyder*, 151 F. (2d) 337 (R. 53) upon the theory that the amendment, the validity of which was under consideration, had been issued under Section 2 (e) of the Emergency Price Control Act.

If this amendment had been issued under Section 2 (e) of the Price Control Act, the Emergency Court of Appeals would have had jurisdiction over any question as to its

validity. However, if it were issued under such section it would have had to be preceded by a determination by the Federal Loan Administrator, with the approval of the President, or the Secretary of Commerce to whom the Federal Loan Administrator's functions, powers and duties were transferred by Executive Order 9071 (7 F. R. 1531) (50 U. S. C. A. App. Section 601), since meat had been defined as a strategic or critical material by the President.

The fact that meat had been defined by the President as a "strategic or critical material" has been frequently recognized by the Court below, see *Illinois Packing Co.* v. *Bowles*, 147 F. (2d) 554, 558. And in the same case that Court concludes "without hesitation, that Amendment No. 2 is a regulation or order issued under Section 2 (e) of the Emergency Price Control Act." That Court further recognizes, as fully set out on page 7 of its opinion in the *Gibbs* case (*Earl C. Gibbs, Inc.* v. *Defense Supplies Corporation and Reconstruction Finance Corporation*, E. C. A., May 8, 1946), that

> "It is true that Defense Supplies Corporation is merely a paying or disbursing agent, and that authority to formulate a program of meat subsidies is vested in the Federal Loan Administrator, subject to the overriding authority of the Director of Economic Stabilization. Amendment No. 2, containing the affiliation provisions, was issued by the Defense Supplies Corporation. We are not at liberty to consider a possible technical objection that the conditions of eligibility for the special subsidy, as prescribed in Amendment No. 2, should have been traced to a determination made by the Federal Loan Administrator, for no such objection was contained in the protest. In addition it would be highly unrealistic to suppose that Defense Supplies Corporation, which falls under the supervision and control of the Federal Loan Administrator (55 Stat. 1429-30), went off on a frolic of its own in this matter."

The Court was not only "at liberty to consider" • • • this

> "possible technical objection that the conditions of eligibility for the special subsidy, as prescribed in Amendment No. 2, should have been traced to a determination made by the Federal Loan Administrator"

(or the Secretary of Commerce as above recited), but was bound to do so if it claimed jurisdiction over the question of the validity of the amendment on the theory, which was its sole theory, that that amendment was issued under Section 2 (e) of the Act. It could only have jurisdiction over the subject matter if this amendment were issued under Section 2 (e) of the Act and that amendment could only have been so issued if the Federal Loan Administrator (later the Secretary of Commerce) had previously made his determination with the approval of the President, that it was "necessary to obtain the maximum necessary production" of meat.

The responsibility resting on the Federal Loan Administrator (later the Secretary of Commerce) could not have been delegated. The courts have often held that delegated responsibility and discretion cannot be redelegated informally and casually and there certainly was no formal delegation. The fact that the Federal Loan Administrator had been the same individual who was the then Secretary of Commerce and also Chairman of the Board of Defense Supplies Corporation, does not in the eyes of the law or in the eyes of Congress, which had delegated certain powers to him as Federal Loan Administrator, sanction the casual theory of subdelegation which the Court below seems to imply from feeling it

> "highly unrealistic to suppose that Defense Supplies Corporation which falls under the supervision and con-

> trol of the Federal Loan Administrator * * * went off on a frolic of its own in this matter."

In this connection reference is made to 42 American Jurisprudence, Public Administrative Law, Section 73, where it is stated:

> "It is a general principle of law, expressed in the maxim '*delegatus non potest delegare*', that a delegated power may not be further delegated by the person to whom such power is delegated. Apart from statute, whether administrative officers in whom certain powers are vested may deputize others to exercise such powers or perform such duties usually depends upon whether the particular act or duty sought to be delegated is ministerial, on the one hand, or, on the other, discretionary or quasi-judicial. Merely ministerial functions may be delegated to assistants whose employment is authorized, but there is no authority to delegate acts discretionary or quasi-judicial in nature."

To like effect is the decision in the case of *Cudahy Packing Co.* v. *Holland*, 315 U. S. 357, in which the question arose of the right of the Administrator of the Wage and Hour Division of the Department of Labor, under the Fair Labor Standards Act, to delegate his statutory power to sign and issued a *subpoena duce tecum*. The Court held that in the absence of clear authorization by Congress in support of such subdelegation, the delegation was improper. It stated at p. 361:

> "A construction of the Act which would thus permit the Administrator to delegate all his duties including those involving administrative discretion which the Act has in terms given only to him, can hardly be accepted unless plainly required by its words."

See also *Guiseppi* v. *Walling* (C. C. A. II, 1944), 144 F. (2d) 608.

Any delegation or any determination of general applicability, as either in this case, if made, would have been, would of necessity have had to be published in the Federal Register. See Section 7 of the Federal Register Act (44 U. S. C. A., Section 307) and Section 5 (a) 2 thereof (44 U. S. C. A. Section 305) as well as Title I, Code of Federal Regulations, Sections 1.5 and 2.2. There was no such publication. It follows that there could have been no valid delegation or determination.

2. If, as clearly appears, the contested amendment could not have been issued under Section 2 (e) of the Act since there had been no previous determination as required thereby, the question is posed under what authority this amendment or any similar amendment could have been issued. The question would seem to be easily resolved and in fact the answer is contained in the amendment itself which states that it is issued "Pursuant to a directive issued by the Office of Economic Stabilization on October 25, 1943." The Director's authority stems from Executive Orders No. 9250 (7 F. R. 7871) and No. 9328 (8 F. R. 4681) which were issued by the President under the authority conferred upon him by the Stabilization Act of 1942 (Oct. 2, 1942, C. 578, 56 Stat. 765).

It has never before been claimed by the Emergency Court of Appeals or by any responsible governmental official or agency that that Court had jurisdiction to determine the validity either of the Stabilization Act, the Executive Orders issued thereunder, the directives of the Director of the Office of Economic Stabilization or any regulations issued pursuant thereto.

3. By Section 2 (m) of the Act

> "No agency, department, officer, or employee of the Government, in the payment of sums authorized by this

> or other Acts of Congress relating to the production or sale of agricultural commodities * * * shall impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder * * * (and) Any person aggrieved by any action of any agency, department, officer, or employee of the Government contrary to the provisions hereof, * * * may petition the district court * * * for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to grant appropriate relief."

By the last paragraph of the Court's opinion (R. 35) the Court has appropriated to itself the jurisdiction thus conferred by Congress upon the United States District Courts by regarding "as a much too narrow reading of the regulation" the argument that the imposition by the defendant of the condition that a non-processing slaughterer becomes disentitled to the special subsidy because it is under common control with a "processor" (even with a fabricator rather than processor) constituted a condition or penalty not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder.

It is admitted (R. 13) that from November 1, 1943 to March 31, 1944 the plaintiff was neither owned nor controlled by a processor or purveyor of meat and that it did not own or control such processor or purveyor of meat, but yet the defendant denied plaintiff's claims for this period on the ground that it was "under joint control with a processor of meat." No language in defendant's regulation even suggests any joint control prohibition. The phrase "under common control with" or "under joint control with" is familiar to governmental agencies. They or similar phrases have frequently been used by the Price Administrator in his regulations. For example, see the

definitions in MPR 169, as it existed at the time of defendants' amendment, of "wholesaler" and "independent hotel supply house" where provision is specifically made to exclude one who is

> "owned or controlled, in whole or in substantial part, by another person who owns or controls in substantial part any slaughtering plant or facilities."

The phrase "under joint or common control with" has frequently been used by the Securities and Exchange Commission and was specifically used by Congress in the Renegotiation Act of 1942 (Section 403 of the 6th Supplemental National Defense Appropriations Act of 1942), where sub-section (c)(6) refers to

> "all persons under the control of or controlling or under common control with the contractor or sub-contractor, under contracts with the Departments."

The interpretation of a regulation which contains no such common control provision as if it had contained such, would clearly seem to be the imposition of a condition not authorized by the provisions of the regulation itself or of any Act.

4. The defendant had no power direct or implied to modify, nor discretion in applying, the directives on policy issued by the Director. It was specifically directed by Executive Order No. 9250 Title I Section 4 "to conform". That Directive is clear, and concise. Its definition of the class of persons to whom the subsidy was to be paid, and the terms under which payment was to be made, are complete. If the Director had intended that Defense Supplies Corporation was to exercise discretion in implementing and varying the terms of the Directive, he could easily have done so. In fact he gave no express authority to utilize discretion. The completeness and directness of the lan-

guage actually used by him further denies the existence of any implied power on the part of the defendant to depart from and vary the terms of the Directive, as it has actually done by the terms of the regulation now in controversy.

It is axiomatic that the power of an administrative agency to prescribe rules and regulations governing the operation of the agency under the statute or power which gave the general basic authority to act, is definitely limited by that general basic authority. Under the guise of rule making the basic purpose and authority can be neither reduced, extended nor in any way modified. *United States* v. *George,* 228 U. S. 14. See also *United States* v. *United Verde Copper Co.,* 196 U. S. 207, which held a rule issued by the Secretary of the Interior defining "other domestic purposes," in the phrase "building, agricultural, mining, or other domestic purposes," as excluding smelting, to be invalid, and said at page 215:

> "If rule 7 (the rule in question) is valid, the Secretary of the Interior has power to abridge or enlarge the statute at will. If he can define one term, he can another. If he can abridge, he can enlarge. Such power is not regulation; it is legislation. The power of legislation was certainly not intended to be conferred upon the Secretary."

In the case at bar the power to establish the qualifications of slaughterers who should receive the special subsidy was certainly not intended to be conferred upon the defendant. It existed only with, as it had been delegated to, the Director.

See also *Walling* v. *Belo Corporation,* 316 U. S. 624, which invalidated a regulation or ruling issued by the Wage and Hour Administrator upon the ground that it constituted an "inflexible and artificial interpretation of

the Act which finds no support in its text" and which as a practical matter operated to negate a clear purpose of the Act.

5. Since there was no authority or discretion vested or inherent in the defendant to modify directly or, under the guise of definition or rule making, indirectly, the comprehensive national policy which the Director was authorized and directed to formulate and disseminate through directives, the question is posed as to whether the amendment complained of did in fact comply therewith. Again the answer seems clear. The pertinent parts of that Directive were:

> "5. Slaughterers who during the year 1942, or a representative portion thereof, sold and who currently sell 98% or more of the total dressed carcass weight of cattle slaughtered by them in the form of carcasses, wholesale cuts, frozen boneless beef (Army specifications) (carcass equivalent) or ground beef, shall be paid in addition to the payments authorized by Regulation No. 3 of Defense Supplies Corporation (Livestock Slaughter Payments), the amount of $0.80 per cwt. of cattle slaughtered during the month for which such payments are made.
>
> "6. Defense Supplies Corporation is directed to amend Regulation No. 3 (Livestock Slaughter Payments) in accordance with this Directive."

Five days later the defendant allegedly acting "Pursuant to" this Directive amended its Regulation No. 3 by issuing Amendment No. 2 which provided in material part as follows:

> "Section 14. Extra Compensation for Non-processing Slaughterers of Beef.
>
> "(a) Definitions.
>
> "(1) 'Non-processing slaughterers of beef' means an unaffiliated slaughterer as hereinafter defined who,

during six consecutive months of 1942, sold, and who currently sells, 98% or more, measured in dressed carcass weight, of the total beef produced from cattle slaughtered by him in all his establishments, in the form of carcasses, wholesale cuts, boneless beef or ground beef.

"(2) 'Unaffiliated slaughterer' means a slaughterer who does not own or control a processor or purveyor of meat, and who is not owned or controlled by a processor or purveyor of meat. 'Unaffiliated slaughterer' shall not include any institution, representative or agency of Federal, State or local governments."

The defendant did not comply with the policy enunciated in the Directive of October 25, 1943. It added the unaffiliated condition herein complained of.

In explaining the policy underlying the Directive of October 25, 1943 the Court below said on page 7 of its opinion in the *Gibbs* case,

> "As explained by the Economic Stabilization Director in his public statement, the general purpose was to afford relief to a group of slaughterers who do not derive profits from further processing operations. It is thus consistent with the policy of the Directive to deny the special subsidy to a non-processing slaughterer affiliated with and controlled by a processing slaughterer—otherwise the benefit of the special subsidy would flow to persons not intended to be benefited *and not needing the special relief.*" (Italics supplied.)

And on page 2 of its opinion in the instant case (R. 34) the Court stated

> "As we explained in *Earl C. Gibbs, Inc.* v. *Defense Supplies Corp. et al.*, No. 226, decided this day, the purpose of the Directive of the Economic Stabilization Director issued October 25, 1943 was to make special provision by way of an extra subsidy to a limited group in the meat industry, namely, to those whose business con-

> sists entirely, or almost entirely, in the sale of dressed carcasses and wholesale cuts from the slaughter of cattle, and who derive no further profit, either direct or indirect, from processing operations in the broad sense."

However, the Court refused to consider, or considering, to give any weight to, and, upon subsequent petition, refused to clarify and enlarge its opinion to include the uncontroverted fact that the plaintiff and its affiliate had no profit whatsoever from their combined beef operations, but in fact lost thereon from July, 1943 through February 15, 1945 a total of $553,845.66 and even lost upon the combined operations of the two, including all departments of, and commodities sold by, its affiliate, a total of $161,078.14 (R. 9, 12, 37).

After reciting that the general purpose of the Directive was to help those slaughterers who needed special relief in order to stay in business and who made no profits either direct or indirect from the processing operations in the broad sense, it seems hardly consistent when faced with such admitted losses, to hold that the nonaffiliation condition, not contained in the Directive, but aided by the amendment, was

> "a reasonable and appropriate provision for carrying into execution the general policy laid down in the Directive of October 25, 1943."

6. The Court below did not consider the question of the validity of the defendant's regulation as interpreted and applied by it, when taken in conjunction with Revised Maximum Price Regulation No. 169, in aid of which it was enacted, which admittedly established maximum prices for wholesale cuts below the actual cost of many non-processing slaughterers, see *Edward Heinz et al.* v. *Bowles,* 149 F. (2d) 277, and also with the War Food Administrator's set-

aside Orders, or if it did give any consideration thereto, did not indicate it in its opinion.

That Court had previously gone to great lengths in the case of *Armour & Co.* v. *Bowles,* 148 F. (2d) 529, cert. denied 325 U. S. 871, to demonstrate how the maximum prices established by RMPR 169, although seemingly below the cost of production, could not be considered unlawful for the large integrated slaughterers who had shown considerable increases in their over-all profits due to the expanding profits from their processing departments. Also the Court encountered, as had the Price Administrator, much difficulty in the cost accounting problem of properly allocating to the slaughtering itself that portion of the processing profits which was in fact attributable to, or could not have come into being without, the by-products obtained from slaughtering.

The plaintiff has no problem of cost accounting (R. 10) and the difficulties encountered with the use of the so-called "cut-out" test are not here present. There are no over-all profits. There is a staggering loss which cannot be and is not disputed. The plaintiff's cost of livestock purchased upon the open market for slaughter was, *exclusive of any cost of slaughter, overhead or administrative expense, $10,743,042.26,* while its net sales of dressed beef, offal and hides, the only products it obtained from its slaughter, together with the regular subsidy received from defendant was $10,639,694.75, showing an out-of-pocket loss, without any allowance for the cost of slaughter, overhead or administration, of $103,347.51.

With such an admitted out-of-pocket loss produced in large part, if not entirely (R. 8, 9) by being compelled to sell a substantial portion of this slaughter to Government agencies under the War Food Administrator's set-aside Orders, at prices established by another Government agency

(RMPR 169), without the benefit of the special subsidy procured for non-integrated slaughterers in aid of the foregoing price regulation, but withheld from the plaintiff by the defendant, it is difficult to understand how any court could fail at least to comment upon the seeming unconstitutionality thereof or, in fact, recognize it. It clearly seems a taking of private property for public use without just compensation.

## Conclusion

Since the questions presented are of general as well as great importance, involving the assumption of jurisdiction by a Federal Court contrary to the apparent mandate of Congress, the authority for and consequent validity of, together with the proper interpretation of, a subsidy regulation under which many hundred million dollars have been and are being paid out by the Government and the validity of regulations which treated together, as they were intended to be, appear to operate, in at least some instances in violation of the Constitution, the petition for writ of certiorari should be granted.

Respectfully submitted,

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# INDEX



## CITATIONS





705993—46——1

# In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 154

ATLANTIC MEAT COMPANY, INC., PETITIONER

*v.*

THE RECONSTRUCTION FINANCE CORPORATION

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS*

## BRIEF FOR THE RESPONDENT IN OPPOSITION

### OPINION BELOW

The opinion of the Emergency Court of Appeals (R. 33–36) is not reported.

### JURISDICTION

The judgment of the Emergency Court of Appeals was entered on May 8, 1946 (R. 36–37). The petition for certiorari was filed June 7, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 204 (d) of the Emergency Price Control Act.

### QUESTIONS PRESENTED

1. Whether the Emergency Court of Appeals has jurisdiction over a proceeding to review the denial of a subsidy by Defense Supplies Corporation. This question involves the subsidiary question whether the subsidy regulation was issued pursuant to Section 2 (e) of the Emergency Price Control Act.

2. Whether the Defense Supplies Corporation had authority to promulgate a regulation providing that slaughterers owned or controlled by a "processor or purveyor of meat" are not entitled to the subsidy, and to hold that under the regulations a slaughterer owned and controlled by a company which also owned and controlled a processor was not entitled to the subsidy.

### STATUTES, REGULATIONS AND EXECUTIVE ORDER INVOLVED

The pertinent provisions of the Emergency Price Control Act (56 Stat. 23), as amended (50 U. S. C. App., Supp. V, Secs. 901, *et seq.*) and of the controlling directives and regulations are set forth in the Appendices, *infra,* pp. 16–33.

### STATEMENT

In June 1943, as part of the President's hold-the-line policy (E. O. 9328, 8 F. R. 4681), the maximum prices of carcass beef and wholesale cuts of beef, were reduced approximately ten (10) percent by order of the Economic Stabilization Director (Amendment No. 15 to RMPR 169, 8

F. R. 7675). This reduction was compensated for by subsidy payments made by Defense Supplies Corporation (later Reconstruction Finance Corporation) under its Regulation No. 3 (8 F. R. 10826).

This subsidy was found insufficient adequately to compensate non-processing slaughterers who derived no income apart from the sale of non-processed beef.

The Director of Economic Stabilization, by his directive of October 25, 1943 (8 F. R. 14641), therefore provided for an additional subsidy of eighty (80) cents per cwt. to non-processing slaughterers of beef. It is this subsidy which is involved in this case. The directive stated that "6. Defense Supplies Corporation is directed to amend Regulation No. 3 (Live-stock Slaughter Payments) in accordance with this Directive". Five days later, pursuant to this Directive, Defense Supplies Corporation amended its subsidy regulation. 9 F. R. 1820. The pertinent portions of this amendment read as follows:

> Section 14. Extra compensation for non-processing slaughterers of beef.
>
> (a) Definitions.
>
> (1) "Non-processing slaughterers of beef" means an unaffiliated slaughterer as hereinafter defined who, during six consecutive months of 1942, sold, and who currently sells, 98% or more, measured in dressed carcass weight, of the total beef

produced from cattle slaughtered by him in all his establishments, in the form of carcasses, wholesale cuts, boneless beef or ground beef.

(2) "Unaffiliated slaughterer" means a slaughterer who does not own or control a processor or purveyor of meat, and who is not owned or controlled by a processor or purveyor of meat. "Unaffiliated slaughterer" shall not include any institution, representative or agency of Federal, State, or local governments.

(3) "Processor or purveyor of meat" means a person who processes fresh beef or sells or dispenses fresh or processed meat or products containing meat, at wholesale or at retail, or in a hotel, restaurant or other eating establishment.

(4) "Own or control" means to own or control directly or indirectly a partnership equity or in excess of ten percent of any class of outstanding stock or to have made loans or advances in excess of five percent of the other persons' monthly sales.

The petitioner demanded payment of $516,809.99 claimed to be due for slaughter during the period November 1, 1943, to February 15, 1945, under this amendment (R. 11). The claim was denied because petitioner from November 1, 1943, to March 31, 1944, was owned and controlled by General Foods Corporation, which likewise owned and controlled Batchelder & Snyder Co., Inc., a processor and purveyor of meat, and after March

31, 1944, was owned and controlled by Batchelder & Snyder Co., Inc. (R. 12–13).

Petitioner thereupon filed a complaint in the Emergency Court of Appeals praying that the amendment be set aside (R. 14–17). The respondent moved to dismiss the complaint for lack of jurisdiction (R. 21). The motion was denied (R. 31), and on May 8, 1946 the court sustained the validity of the definition excluding slaughterers affiliated with processors and purveyors, and held that it applied when the nonprocessing slaughterer and a processor "are owned and controlled by a common parent" (R. 33–36).

## ARGUMENT

### 1. THE JURISDICTION OF THE EMERGENCY COURT

(a) In filing its complaint petitioner invoked the jurisdiction of the Emergency Court of Appeals. As in several similar cases Defense Supplies Corporation moved to dismiss the complaint on the ground that the Emergency Court of Appeals had no jurisdiction to determine the validity of its orders. In *Illinois Packing Co.* v. *Bowles,* 147 F. 2d 554, and *Illinois Packing Co.* v. *Snyder,* 151 F. 2d 337, the Emergency Court held that it had jurisdiction over all regulations and orders issued under Section 2 of the Price Control Act and, that the Defense Supplies Corporation's regulation was issued under Section 2 (e). Defense Supplies Corporation has acquiesced in this deci-

sion. Now, having lost its case on the merits, petitioner urges for the first time (see R. 2–4, 14–17) that the Emergency Court of Appeals had no jurisdiction to hear its complaint. If it prevailed in its contention, the consequence would still be affirmance of the decision below dismissing the complaint though on another ground. We do not propose to argue here the general authority of the Emergency Court over subsidy regulations, inasmuch as that does not seem to be challenged by petitioner. The Court is respectfully referred to the two *Illinois Packing* opinions for a discussion of that question.

Although apparently not attacking the reasoning of those opinions, which hold that the Emergency Court has jurisdiction over subsidy orders issued under Section 2 (e), petitioner contends that the Emergency Court lacked jurisdiction in this case because it does not appear that the regulation issued by Defense Supplies Corporation was approved by the Federal Loan Administrator (who was chairman of Defense Supplies Corporation), as required by Section 2 (e) for subsidies on materials found by the President to be critical, a class which includes meat. Whether the regulation was properly approved by the Federal Loan Administrator would affect its validity under the Price Control Act. But when a regulation purports to be issued under Section 2 (e), its validity

under that section is for the Emergency Court itself to decide. Clearly a defect in the procedure by which the order was issued would not affect the jurisdiction of the Emergency Court to hear the case. Since the issue does not run to the jurisdiction of the Emergency Court, and since the point was not presented to or passed on by the court below in this case,[1] petitioner is not entitled to raise it for the first time here.

It may be pointed out that Section 2 of Public Law No. 88, 79th Cong., 1st Sess. (June 23, 1945) indicates clearly that the Emergency Court of Appeals is regarded as a proper forum for the review of determinations of the Defense Supplies

[1] Petitioner in No. 147, *Gibbs* v. *R. F. C.* also has not raised this issue, but the Emergency Court dealt with it in its opinion in that case as follows (R. 57):

"It is true that Defense Supplies Corporation is merely a paying or disbursing agent, and that authority to formulate a program of meat subsidies is vested in the Federal Loan Administrator, subject to the overriding authority of the Director of Economic Stabilization. Amendment No. 2, containing the affiliation provisions, was issued by the Defense Supplies Corporation. We are not at liberty to consider a possible technical objection that the conditions of eligibility for the special subsidy, as prescribed in Amendment No. 2, should have been traced to a determination made by the Federal Loan Administrator, for no such objection was contained in the protest. In addition, it would be highly unrealistic to suppose that Defense Supplies Corporation, which falls under the supervision and control of the Federal Loan Administrator (53 Stat. 1429–30), went off on a frolic of its own in this matter."

Corporation. The statutory provision is set forth in the margin.[3]

In apparent recognition of the fact that its criticism of the regulation as not having been approved by the Federal Loan Administrator would apply equally to the Directive and the portion of the same regulation (paragraph (d), see *infra*, pp. 27–28) authorizing the subsidy it seeks to recover, petitioner suggests (p. 10) that the subsidy was not authorized under Section 2 of the Price Control Act but under Executive Orders No. 9250 (7 F. R. 7871) and No. 9328 (8 F. R. 4681), which were issued by the President under the authority con-

[3] Any slaughterer who heretofore or hereafter shall have received extra compensation payments under Livestock Slaughter Payments Regulation Numbered 3 of Defense Supplies Corporation (adopted pursuant to directives of the Director of Economic Stabilization) when such slaughterer was not in a class eligible for such extra compensation payments, shall be relieved, in whole or in part, of obligation to repay the amount thereof and shall be entitled to receive, in whole or in part, the amount of such extra compensation payments repaid by such slaughterer to, or withheld by Defense Supplies Corporation on account of such extra compensation payments, to the extent that it is determined by the Director of Economic Stabilization, or any agency of the Government authorized by him, that it would be inequitable for Defense Supplies Corporation to require repayment by such slaughterer or to retain the amounts so repaid or withheld, provided such Director or Agency also determines that such slaughterer believed reasonably and in good faith that he was eligible to receive such extra compensation payments: *Provided*, That any determination by such Director or agency under this section shall be reviewable by the Emergency Court of Appeals under such rules as such court may prescribe."

ferred upon him by the Stabilization Act of 1942 (56 Stat. 765, 50 U. S. C. App., Supp. V, Secs. 961–970). These orders do no more than empower the Economic Stabilization Director to direct other Federal agencies as to policy within their statutory authority. Insofar as subsidies are concerned, Order 9250 provides merely that the Director "may direct any Federal department or agency * * * to use its authority to subsidize" in specified circumstances. 7 F. R. 7873. The Order further provides that "the administration of activities related to the national economic policy shall remain with the departments and agencies now responsible for such activities, but such administration shall conform to the directives on policy issued by the Director". 7 F. R. 7871. Neither the Stabilization Act nor Executive Order 9328 contain anything on the subject. Section 2 (e) of the Price Control Act thus remains the sole statutory authority for the subsidies, and since neither the Directive of October 25, 1943, nor the Defense Supplies amendment of October 30, 1943, which jointly and severally contain the only authority for the subsidy, on their face were approved by the Federal Loan Administrator, acceptance of petitioners' argument as to the invalidity of the amendment would completely defeat its claim to the subsidy.

(b) Petitioner also argues that the Emergency Court lacked jurisdiction because Section 2 (m)

of the Price Control Act, as amended, provides that no agency shall impose unlawful conditions upon the payment of the subsidies authorized under the Act, and that persons aggrieved by agency action in this respect may petition the district courts for relief. Petitioner contends (p. 11), that the imposition of the condition that "a non-processing slaughterer becomes disentitled to the special subsidy because it is under common control with a 'processor' " is not authorized by the statute or the lawful regulations, and apparently that therefore the district court rather than the Emergency Court has jurisdiction over the case. This contention too, we believe, goes to the validity or lawfulness of the regulation, which we consider below, and not to the jurisdiction of the Emergency Court. The opinion of the Emergency Court in *Illinois Packing Co.* v. *Bowles,* 147 F. 2d 554, at 559–560, deals specifically with the contention that Section 2 (m) withdraws jurisdiction from the Emergency Court, and holds that it does not. Public Law No. 88, referred to above, *supra,* p. 8, would appear to confirm the Emergency Court's view that it has authority to review orders relating to subsidies.

2. THE VALIDITY OF THE REGULATION

(a) Petitioner's primary argument as to the invalidity of the regulation limiting the additional subsidy for non-processing slaughterers to those not affiliated with processors is that it is not

in harmony with the Directive issued by the Director of the Office of Economic Stabilization. Petitioner reads that Directive as self-sufficient and not permitting further implementation, and also contends that the regulation issued by the Defense Supplies Corporation is not consistent with the policy enunciated in the Directive.

That the Directive empowered the Defense Supplies Corporation to issue a regulation carrying out the policy of the Directive in more detail appears from its face. Paragraph 6 of the Directive stated that "Defense Supplies Corporation is directed to amend Regulation No. 3 * * * in accordance with this Directive". This in itself suggests that Defense Supplies Corporation was intended to amplify for administrative purposes the brief provisions of the Directive. In view of the fact that the Director has not himself objected to or overriden the Defense Supplies regulation, it should be presumed that he regarded it as authorized by his Directive. And even apart from the Directive itself, the Defense Supplies Corporation, acting on behalf of the Federal Loan Administrator, had authority to determine the conditions on which subsidies were to be paid, so long as its determination is consistent with the controlling directives on policy of the Office of Economic Stabilization. See Section 2 (e).

The regulation's definition of a "non-processing slaughterer" was entirely consistent with the Directive of the Office of Economic Stabilization.

Clearly the policy of the Directive that the additional subsidy be paid only to slaughterers who are not also processors would be evaded and frustrated if division of a single business enterprise into separate corporate entities enabled a slaughtering subsidiary to obtain the subsidy. The advantages which flow from a combined slaughtering and processing operation, upon which the need for an additional subsidy for non-processors was predicated, obviously exist whether the operations are carried on by a single corporation or by affiliated organizations. Thus, the regulation defining the slaughterers entitled to the subsidy in the manner which would exclude those affiliated with processing corporations not only was in harmony with, but was necessary to effectuate the purposes of, the controlling Directive.

(b) Petitioner also contends that it is an "unaffiliated slaughterer" within the meaning of the regulation. That phrase is defined to mean "a slaughterer who does not own or control a processor or purveyor of meat, and who is not owned or controlled by a processor or purveyor of meat." Since March 31, 1944, the petitioner has been owned and controlled by Batchelder & Snyder, Inc., a processor or purveyor of meat. Before that date the petitioner and Batchelder & Snyder were both owned and controlled by General Foods Corporation (R. 13). It is petitioner's contention that during the period in which both petitioner and the processor were owned and controlled by

the same corporation, petitioner was an "unaffiliated slaughterer" inasmuch as during that period petitioner neither owned nor was owned by Batchelder & Snyder.

The regulation, however, contains its own definition of "own or control". This is defined, *inter alia,* to mean "to own or control directly or indirectly * * * in excess of ten percent of any class of outstanding stock" in Section 14 (a) (4) set forth *supra,* p. 4. The reference to indirect ownership indicates that the regulation was not to be read too narrowly. General Foods, which owned all of petitioner's stock, and Batchelder & Snyder, its subsidiary processing corporation, can be regarded as a single entity owning petitioner's stock. Such a construction is obviously necessary if the purpose of the subsidy for nonprocessing slaughterers is not to be defeated by a particular arrangement of affiliated corporations. As the Emergency Court said in respect to petitioner's argument (R. 36):

> This we regard as a much too narrow reading of the regulation. The situation prior to April 3, 1944, was in substance no different from the situation after that date; in either case, payment of the subsidy to complainant would inure to the benefit of a person not within the group intended by the Directive of October 25, 1943, to be the object of special relief. In the early period, in substance if not in form, General Foods Corporation (which owned complainant) was itself in the hotel supply

house business through its subsidiary corporation Batchelder & Snyder, and thus was a "processor of meat" within the meaning of the subsidy regulation.

(c) Petitioner also argues that the subsidy regulation is unlawful under both the statute and the due process clause inasmuch as the combined operations of petitioner and its affiliate were unprofitable between 1943 and 1945. Certainly neither the Constitution nor the statute require that a producer be given a subsidy enabling his business to operate profitably. If, as a result of the combined effect of the maximum price ceiling imposed by the Price Administrator and the subsidy provisions, petitioner is not being lawfully treated, his remedy is to attack the price ceiling which is binding upon him rather than the subsidy regulation. *Cf. Heinz* v. *Bowles,* 149 F. 2d 277, 150 F. 2d 546 (E. C. A.); *Armour & Co.* v. *Bowles,* 148 F. 2d 529 (E. C. A.), certiorari denied, 325 U. S. 871.

3. The meat subsidy program was terminated June 30, 1946, by the expiration of the Emergency Price Control Act. Under the Price Control Extension Act of 1946 (Pub. L. 548, 79th Cong., 2d Sess., approved July 25, 1946) a new meat subsidy may not be instituted prior to August 21, 1946, nor without a determination by a Price Decontrol Board. Whether the problems raised by this case would be presented by

any new subsidy program, if one is ever adopted, is to be doubted. Although the new legislation does not render moot controversies such as this, which involve the right of petitioner to payments for past operations, the problem is not of sufficient present importance to warrant further review.

CONCLUSION

Accordingly it is respectfully submitted that the petition for certiorari should be denied.

J. HOWARD MCGRATH,
*Solicitor General.*

ROBERT L. STERN,
*Special Assistant to*
*the Attorney General.*

JOHN D. GOODLOE,
*General Counsel,*
JAMES L. DOUGHERTY,
*Assistant General Counsel,*
JOHN C. ERICKSON,
*Counsel,*
*Reconstruction Finance Corporation.*
JULY 1946.

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## APPENDIX A

The pertinent provisions of Section 2 (e) of the Emergency Price Control Act of 1942, 56 Stat. 26, 50 U. S. C. App., Supp. V, Sec. 902 (e), reads as follows:

* * * * *

(e) Whenever the Administrator determines that the maximum necessary production of any commodity is not being obtained or may not be obtained during the ensuing year, he may, on behalf of the United States, without regard to the provisions of law requiring competitive bidding, buy or sell at public or private sale, or store or use, such commodity in such quantities and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof or otherwise to supply the demand therefor, or to make subsidy payments to domestic producers of such commodity in such amounts and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof: *Provided,* That in the case of any commodity which has heretofore or may hereafter be defined as a strategic or critical material by the President pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, such determinations shall be made by the Federal Loan Administrator, with the approval of the President, and, notwithstanding any other provision of this Act or of any existing law, such commodity may be bought or sold, or stored

or used, and such subsidy payments to domestic producers thereof may be paid, only by corporations created or organized pursuant to such section 5d; except that in the case of the sale of any commodity by any such corporation, the sale price therefor shall not exceed any maximum price established pursuant to subsection (a) of this section which is applicable to such commodity at the time of sale or delivery, but such sale price may be below such maximum price or below the purchase price of such commodity, and the Administrator may make recommendations with respect to the buying or selling, or storage or use, of any such commodity: *Provided, however,* That, with the exception of any commodity which prior to the effective date of his amendatory proviso has been defined as a strategic or critical material pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, no agricultural commodity or commodity manufactured or processed in whole or substantial part from any agricultural commodity intended to be used as food for human consumption, shall, for the purposes of this subsection, be defined as a strategic or critical material pursuant to the provisions of said section 5d of the Reconstruction Finance Corporation Act, as amended. In any case in which a commodity is domestically produced, the powers granted to the Administrator by this subsection shall be exercised with respect to importations of such commodity only to the extent that, in the judgment of the Administrator, the domestic production of the commodity is not sufficient to satisfy the demand therefor. * * *

* * * * *

## APPENDIX B

Section 2 (m) of the Emergency Price Control Act, as added by Section 102 of the Stabilization Extension Act of 1944, 58 Stat. 632, 50 U. S. C. App., Supp. V, Sec. 902 (m) reads as follows:

* * * * *

(m) No agency, department, officer, or employee of the Government, in the payment of sums authorized by this or other Acts of Congress relating to the production or sale of agricultural commodities, or in contracts for the purchase of any such commodities by the Government or any department or agency thereof, or in any allocation of materials or facilities, or in fixing quotas for the production or sale of any such commodities, shall impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder, under which such sums are authorized, such contracts are made, materials and facilities allocated, or quotas for the production or sale of any such commodities are imposed. Any person aggrieved by any action of any agency, department, officer, or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department, officer, or employee, may petition the district court of the district in which he resides or has his place of business for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful;

and the court shall have jurisdiction to grant appropriate relief. The provisions of the Judicial Code as to monetary amount involved necessary to give jurisdiction to a district court shall not be applicable in any such case.

## APPENDIX C

**Section 2 of the Act of June 23, 1945, Public Law 88, 79th Cong., 1st sess., reads as follows:**

> Any slaughterer who heretofore or hereafter shall have received extra compensation payments under Livestock Slaughter Payments Regulation Numbered 3 of Defense Supplies Corporation (adopted pursuant to directives of the Director of Economic Stabilization) when such slaughterer was not in a class eligible for such extra compensation payments, shall be relieved, in whole or in part, of obligation to repay the amount thereof and shall be entitled to receive, in whole or in part, the amount of such extra compensation payments repaid by such slaughterer to, or withheld by Defense Supplies Corporation on account of such extra compensation payments, to the extent that it is determined by the Director of Economic Stabilization, or any agency of the Government authorized by him, that it would be inequitable for Defense Supplies Corporation to require repayment by such slaughterer or to retain the amounts so repaid or withheld, provided such Director or agency also determines that such slaughterer believed reasonably and in good faith that he was eligible to receive such extra compensation payments: *Provided,* That any determination by such Director or agency under this section shall be reviewable by the Emergency Court of Appeals under such rules as such court may prescribe.

## APPENDIX D

The directive of the Economic Stabilization Director of October 25, 1943, 8 F. R. 14641, reads as follows:

### OFFICE OF ECONOMIC STABILIZATION

#### LIVESTOCK SLAUGHTER PAYMENTS

This directive is issued pursuant to the authority vested in me by the Act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation and for other purposes," and by Executive Order No. 9250, October 3, 1942, and Executive Order No. 9328, April 8, 1943.

1. The purposes of this directive are to insure:

(a) That the livestock slaughter payments made with respect to cattle under Regulation No. 3 of Defense Supplies Corporation (Livestock Slaughter Payments) inure to the benefit of cattle producers;

(b) That such payments are made only to the extent necessary to maintain live cattle prices within a range consistent with the purposes of the stabilization and production programs;

(c) That such prices do not impose undue hardship upon any group of slaughterers whose output is needed to obtain the maximum necessary production; and

(d) That the available supplies of live cattle are equitably distributed among slaughterers and feeders.

2. It is hereby determined that the stabilization and production programs require the maintenance of live cattle prices within the following ranges:

| Grade: | Price (per cwt., at Chicago) |
|---|---|
| Choice | $15.00 to $16.00 |
| Good | 14.25 to 15.25 |
| Medium | 12.00 to 13.00 |
| Common | 10.00 to 11.00 |
| Cutter and canner | 7.45 to 8.45 |
| Bologna bulls | 7.45 to 8.45 |

The price Administrator and the War Food Administrator are directed to determine and publish, and to certify to Defense Supplies Corporation, live cattle prices at points other than Chicago which are in line with the foregoing Chicago prices.

3. There shall be deducted from the livestock slaughter payments hereafter made to any slaughterer under Regulation No. 3 of Defense Supplies Corporation( Livestock Slaughter Payments) the net amount, if any, by which the total of the prices paid by such slaughterer for all live cattle purchased during the month for which the payments are made either fell short of the total amount he would have paid at the lower of the applicable prices, or exceeded the total amount he would have paid at the higher of the applicable prices, set forth or provided for in paragraph 2, above.

The grade of live animals purchased by a slaughterer shall be determined on the basis of the carcass grade. The Price Administrator and the War Food Administrator are directed to determine and publish, and to certify to Defense Supplies Corporation, conversion factors for determining the dressed weight equivalents of live weights.

In the case of slaughterers who operate more than one plant, the amount of the payments and deductions to be made shall be determined separately for each plant.

4. The livestock slaughter payments hereafter made with respect to cattle under Regulation No. 3 of Defense Supplies Corporation (Livestock Slaughter Payments) to any slaughterer whose beef carcasses are graded by an official grader of the Food Distribution Administration shall be revised and computed on a grade basis as follows:

| Grade: | *Payments per live cwt.* |
|---|---|
| Choice | $1.00 |
| Good | 1.45 |
| Medium | .90 |
| Common | .50 |
| Cutter and Canner | .50 |
| Bologna Bull | .50 |

Livestock slaughter payments made to slaughterers whose beef carcasses are not graded by an official grader of the Food Distribution Administration shall remain unchanged.

5. Slaughterers who during the year 1942, or a representative portion thereof, sold and who currently sell 98% or more of the total dressed carcass weight of cattle slaughtered by them in the form of carcasses, wholesale cuts, frozen boneless beef (Army specifications) (carcass equivalent) or ground beef, shall be paid in addition to the payments authorized by Regulation No. 3 of Defense Supplies Corporation (Livestock Slaughter Payments), the amount of $0.80 per cwt. of cattle slaughtered during the month for which such payments are made.

6. Defense Supplies Corporation is directed to amend Regulation No. 3 (Live-

stock Slaughter Payments) in accordance with this Directive.

7. The War Food Administrator is directed as soon as practicable to institute a system of allocation of live cattle to slaughterers and feeders which is adequate to maintain an equitable distribution of available supplies.

8. The Secretary of Commerce is directed to determine on the basis of facts certified by the War Food Administration and the Office of Price Administration whether the effectuation of the expressed purposes of this directive require adjustments in, or additions to, the payments contemplated by this directive because of inequities resulting from differences in transportation costs.

9. This directive shall become effective immediately, except that paragraphs 3 and 4 shall become effective on December 1, 1943, and payments under paragraph 5 shall be made with respect to cattle slaughtered on and after November 1, 1943.

Issued this 25th day of October, 1943.

FRED M. VINSON,
*Director.*

# APPENDIX E

## Defense Supplies Corporation Amendment to Meat Subsidy Regulation (9 F. R. 1820)

[Reg. 3, Amdt. 2]

### PART 7003—LIVESTOCK SLAUGHTER PAYMENTS

### EXTRA COMPENSATION FOR NON-PROCESSING SLAUGHTERERS OF BEEF

Pursuant to a directive issued by the Office of Economic Stabilization on October 25, 1943 (8 F. R. 14641), Regulation No. 3 of Defense Supplies Corporation is hereby amended by adding a new § 7003.14, as follows:

§ 7003.14 *Extra compensation for non-processing slaughterers of beef*—(a) *Definitions.* (1) "Non-processing slaughterer of beef" means an unaffiliated slaughterer as hereinafter defined who during six consecutive months of 1942, sold, and who currently sells, 98% or more, measured in dressed carcass weight, of the total beef produced from cattle slaughtered by him in all his establishments, in the form of carcasses, wholesale cuts, boneless beef or ground beef.

(2) "Unaffiliated slaughterer" means a slaughterer who does not own or control a processor or purveyor of meat, and who is not owned or controlled by a processor or purveyor of meat. "Unaffiliated slaughterer" shall not include any institution, representative or agency of Federal, State, or local governments.

(3) "Processor or purveyor of meat" means a person who processes fresh beef or sells or dispenses fresh or processed meat or products containing meat, at wholesale or at retail, or in a hotel, restaurant, or other eating establishment.

(4) "Own or control" means to own or control directly or indirectly a partnership equity or in excess of ten percent of any class of outstanding stock or to have made loans or advances in excess of five percent of the other person's monthly sales.

(5) "Beef" means meat derived from the carcasses of bovine animals which does not qualify as veal as defined in § 1364.470 (a) (3) of Revised Maximum Price Regulation No. 169 issued by the Office of Price Administration.

(6) "Cattle" means bovine animals, slaughter of which results in the production of beef.

(7) "Carcasses" means beef carcasses as defined in § 1364.455 (a) (8) of Revised Maximum Price Regulation No. 169 issued by the Office of Price Administration.

(8) "Wholesale cuts" means beef wholesale cuts as defined in § 1364.455 (a) (9) of Revised Maximum Price Regulation No. 169 issued by the Office of Price Administration.

(9) "Boneless beef" means the dressed carcass equivalent of beef covered by § 1364.452 (*l*), (m) and (n) of Revised Maximum Price Regulation No. 169 issued by the Office of Price Administration.

(10) "Ground beef" means the dressed carcass equivalent of ground beef as defined in § 1364.452 (p) (4) of Revised Maximum Price Regulation

No. 169 issued by the Office of Price Administration.

(b) *Persons eligible for extra compensation.* Any non-processing slaughterer of beef who files an application for payment under §§ 7003.1 through 7003.5 of this regulation may file a claim for extra compensation on account of cattle slaughtered on and after November 1, 1943, for any accounting period for which he files an application for payment under §§ 7003.1 through 7003.5.

(c) *Filing claims.* (1) Claims for extra compensation shall be filed in the same manner as, for the same period as, and with, the applications for payment provided for in §§ 7003.1 through 7003.5 of this regulation.

(2) If an applicant's accounting period does not begin on November 1, 1943, he may include in his claim for extra compensation for the first full accounting period beginning after November 1, 1943, the cattle slaughtered on and after November 1, 1943 and before the beginning of the next accounting period.

(d) *Payment of claims.* Defense Supplies Corporation will make payment on approved claims for extra compensation at the rate of .8 cents a pound on the same amount of live weight of cattle slaughtered on and after November 1, 1943, on which payments are made to the applicant under §§ 7003.1 through 7003.5 of this regulation. Payments will be made in the same manner and on the same terms as payments of applications under §§ 7003.1 through 7003.11 of this regulation.

(e) This section shall become effective as of November 1, 1943.

Issued this 30th day of October 1943.

GEORGE H. HILL, Jr.,
*Executive Vice President.*

# APPENDIX F

## EXECUTIVE ORDER 9250, AS AMENDED

### PROVIDING FOR THE STABILIZING OF THE NATIONAL ECONOMY

By virtue of the authority vested in me by the Constitution and the statutes, and particularly by the Act of October 2, 1942, entitled "An Act to Amend the Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and for Other Purposes", as amended by the Public Debt Act of 1943 (Public Law 34, 78th Cong.), as President of the United States and Commander in Chief of the Army and Navy, and in order to control so far as possible the inflationary tendencies and the vast dislocation attendant thereon which threaten our military effort and our domestic economic structure, and for the more effective prosecution of the war, it is hereby ordered as follows:

### TITLE I

### ESTABLISHMENT OF AN OFFICE OF ECONOMIC STABILIZATION

1. There is established in the Office for Emergency Management of the Executive Office of the President an Office of Economic Stabilization at the head of which shall be an Economic Stabilization Director (hereinafter referred to as the Director).

2. There is established in the Office of Economic Stabilization an Economic Stabilization Board with which the Director shall advise and consult. The Board shall consist of the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Board of Governors of the Federal Reserve System, the Director of the Bureau of the Budget, the Price Administrator, the Chairman of the National War Labor Board, and two representatives each of labor, management, and farmers to be appointed by the President. The Director may invite for consultation the head of any other department or agency. The Director shall serve as Chairman of the Board.

3. The Director, with the approval of the President, shall formulate and develop a comprehensive national economic policy relating to the control of civilian purchasing power, prices, rents, wages, salaries, profits, rationing, subsidies, and all related matters—all for the purpose of preventing avoidable increases in the cost of living, cooperating in minimizing the unnecessary migration of labor from one business, industry, or region to another, and facilitating the prosecution of the war. To give effect to this comprehensive national economic policy the Director shall have power to issue directives on policy to the Federal departments and agencies concerned.

4. The guiding policy of the Director and of all departments and agencies of the Government shall be to stabilize the cost of living in accordance with the Act of October 2, 1942; as amended by the Public Debt Act of 1943, and it shall be the duty

and responsibility of the Director and of all departments and agencies of the Government to cooperate in the execution of such administrative programs and in the development of such legislative programs as may be necessary to that end. The administration of activities related to the national economic policy shall remain with the departments and agencies now responsible for such activities, but such administration shall conform to the directives on policy issued by the Director.

* * * * *

## TITLE V

### PROFITS AND SUBSIDIES

1. The Price Administrator in fixing, reducing, or increasing prices, shall determine price ceilings in such a manner that profits are prevented which in his judgment are unreasonable or exorbitant.

2. The Director may direct any Federal department or agency including, but not limited to, the Department of Agriculture (including the Commodity Credit Corporation and the Surplus Marketing Administration), the Department of Commerce, the Reconstruction Finance Corporation, and other corporations organized pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, to use its authority to subsidize and to purchase for resale, if such measures are necessary to insure the maximum necessary production and distribution of any commodity, or to maintain ceiling prices, or to prevent a price rise inconsistent with the purposes of this Order.

## TITLE VI

### GENERAL PROVISIONS

1. Nothing in this Order shall be construed as affecting the present operation of the Fair Labor Standards Act, the National Labor Relations Act, the Walsh-Healey Act, the Davis-Bacon Act, or the adjustment procedure of the Railway Labor Act.

2. Salaries and wages under this Order shall include all forms of direct or indirect remuneration to an employee or officer for work or personal services performed for an employer or corporation, including but not limited to, bonuses, additional compensation, gifts, commissions, fees, and any other remuneration in any form or medium whatsoever (excluding insurance and pension benefits in a reasonable amount as determined by the Director); but for the purpose of determining wages or salaries for any period prior to September 16, 1942, such additional compensation shall be taken into account only in cases where it has been customarily paid by employers to their employees. "Salaries" as used in this Order means remuneration for personal services regularly paid on a weekly, monthly or annual basis.

3. The Director shall, so far as possible, utilize the information, data, and staff services of other Federal departments and agencies which have activities or functions related to national economic policy. All such Federal departments and agencies shall supply available information, data, and

services required by the Director in discharging his responsibilities.

4. The Director shall be the agency to receive notice of any increase in the rates or charges of common carriers or other public utilities as provided in the aforesaid Act of October 2, 1942.

5. The Director may perform the functions and duties, and exercise the powers, authority, and discretion conferred upon him by this Order through such officials or agencies, and in such manner, as he may determine. The decision of the Director as to such delegation and the manner of exercise thereof shall be final.

6. The Director, if he deems it necessary, may direct that any policy formulated under this Order shall be enforced by any other department or agency under any other power or authority which may be provided by any of the laws of the United States.

7. The Director, who shall be appointed by the President, shall receive such compensation as the President shall provide, and within the limits of funds which may be made available, may employ necessary personnel and make provision for supplies, facilities and services necessary to discharge his responsibilities.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
*October 3, 1942.*

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